(16,875.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 298.

NORMAN MARKUSON, APPELLANT,

vs.

N. F. BOUCHER, WARDEN OF THE PENITENTIARY OF NORTH DAKOTA, AT BISMARCK.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NORTH DAKOTA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 23, 1898.

And this complainant further avers that all of said proceedings against this complainant which culminated in said sentence and confinement were had and carried on by the attorney general of said State of North Dakota under and pursuant to the prov sions of sections 7605 of the Revised Codes of said State of North Dakota and of the other statutes of said State of North Dakota concerning and regulating said procedure.

And this complainant avers and says that the said statutes of the State of North Dakota providing for and regulating said proceedings were and are enacted, maintained, and enforced in violation of the Constitution of the United States, and particularly in violation of article five of said Constitution of the United States, in this, that said statutes provide for the charging of a citizen with an
4 infamous crime and proceeding to compel him to answer therefore and to be punished therefor without a presentment or indictment of a grand jury, and that said statutes are further in violation of the sixth article of the Constitution of the United States — America because said statutes deprive an accused in criminal prosecution of a right to trial by an impartial jury of the State and district wherein said crime shall have been com-itted.

That said statutes are further in violation of the Constitution of the United States because *it* permits the trial and conviction of one accused of crime without being confronted with the witnesses against him.

And this complainant further alleges that said judgment and sentence under which complainant is now confined in said penitentiary are in violation of his constitutional rights, in that said judgment and sentence are in conflict with and in violation of the said fifth article of the Constitution of the United States, in that this complainant has been held to answer for an infamous crime and has been sentenced to the State penitentiary of said State of North Dakota and is now undergoing a one year's sentence therein without ever having been presented or indicted by a grand jury and without there ever having been filed against him an information in the nature of such presentment.

This complainant further alleges that he diligently prosecuted his appeal from said judgment and sentence in said district court to the supreme court of said State of North Dakota; that the said supreme court of the said State of North Dakota has lately determined
5 said cause against him and final judgment in said supreme court has been entered against him.

That this complainant is in straightened circumstances; that he is without means or power to prosecute or sue out a writ of error to the Supreme Court of the United States, which said Supreme Court of the United States, as this complainant is informed and believes, is the only tribunal in which said judgment of said State Supreme Court can be reviewed upon appeal or writ of error; that complainant is likewise without means, ability, or capacity to cause said appeal or writ of error to be presented and argued by counsel in said Supreme Court of the United States; that, as complainant is informed and believes, if he had the means and ability to

prosecute said writ of error to said Supreme Court of the United States, the same could not be brought on for hearing or heard or determined by said court prior to the time when said sentence would expire by its terms, and that this complainant is remediless in the premises unless this court shall issue to him its writ of *habeas corpus*.

That this complainant is a citizen of the United States and entitled to all the privileges, rights, and immunities conferred upon such citizens by the Constitution of the United States.

Wherefore complainant prays that the writ of *habeas corpus* of this court issue, addressed to the said N. F. Boucher, as warden of the penitentiary of said State of North Dakota, at Bismarck, in said State, requiring said warden to produce before this court, at a time and place to be fixed in said writ, the body of this complainant, to the end that this complainant may be discharged from such
6 sentence and custody because of the matters and things aforesaid.

NORMAN MARKUSON,
Complainant.

C. D. & THOS. D. O'BRIEN,
St. Paul, Minn., Attorneys for Complainant.

STATE OF NORTH DAKOTA, } ss:
County of Burleigh, }

Norman Markuson, having been by me duly sworn, doth depose and say that he is the complainant above named; that he has heard read the said complaint and knows the contents thereof, and that the same has been subscribed by him, and that said complaint is true to the best of his knowledge and belief.

NORMAN MARKUSON.

Subscribed and sworn to before me this 30th day of December, A. D. 1897.

NELSON F. BOUCHER,
[SEAL.] *Notary Public, Burleigh County, North Dakota.*

Let the writ issue pursuant to the within petition, returnable before me at Fargo, January 24th, 1898, at 10 o'clock a. m.

CHARLES F. AMIDON, *Judge.*

Dated January 3, 1898."

7 Upon the back of said petition and order appear indorsements in words and figures following, to wit:

"# 18. United States district court, district of North Dakota. In the matter of the petition of Norman Markuson for a writ of *habeas corpus*. C. D. & Thos. D. O'Brien, attorneys for petitioner, 212 Globe bldg., St. Paul, Minn. Filed Jan. 3, 1898. J. A. Montgomery, clerk, by E. R. Steele, deputy."

Thereupon, afterwards, to wit, on said 3d day of January, 1898, a writ of *habeas corpus* was issued in said matter; which said writ is in words and figures following, to wit:

"UNITED STATES OF AMERICA, }
District of North Dakota. }

United States District Court.

The President of the United States of America to N. F. Boucher, warden of the State penitentiary, at Bismarck, North Dakota, Greeting:

We command you that you have the body of Norman Markuson, by you imprisoned and detained, as it is said, together with the term and cause of such imprisonment and detention, by whatsoever name the said Norman Markuson shall be called or charged, before the Honorable Charles F. Amidon, judge of the district court of the United States for the district of North Dakota, at the chambers of said Honorable Charles F. Amidon, in the Public building, at Fargo, in said district, on the 24th day of January, 1898, at ten o'clock a. m., and to do and to receive what shall then and there be
8 considered concerning said Norman Markuson; and have you then and there this writ.

Witness the Honorable Charles F. Amidon, judge of the district court of the United States for said district, at Fargo, in
[SEAL.] said district, this 3d day of January, in the year of our Lord one thousand eight hundred and ninety-eight.

J. A. MONTGOMERY, *Clerk.*

C. D. & THOS. D. O'BRIEN,
Attorneys for Petitioner."

Upon the back of said writ appear indorsements in words and figures following, to wit:

"DISTRICT OF NORTH DAKOTA, *ss:*

I hereby certify and return that I executed the writ of *habeas corpus*, of which the above and foregoing is a duplicate, by handing the same to N. F. Boucher, warden of the State penitentiary, personally, at Bismarck, in said district, on the 4th day of January, 1898.

J. E. CRONAN,
U. S. Marshal,
By JNO. YEGEN, *Deputy.*

DISTRICT OF NORTH DAKOTA, *ss:*

I hereby certify and return that on the 3rd day of January, 1898, at Fargo, in said district, I deposited in the mails of the United States, registered, a letter containing a notice of the issuance
9 of the within writ of *habeas corpus*, giving the date and place of the return thereof, addressed to Edward Winterer, State's attorney for Barnes county, Valley City, North Dakota; also at the same time and place and in the same manner a letter containing a similar notice was mailed to John F. Cowan, attorney general, Bismarck, North Dakota; that the receipts for both of said letters,

signed by Edward Winterer and John F. Cowan respectively, acknowledging the receipt of the aforesaid mentioned letters, are hereto attached.

J. E. CRONAN,
U. S. Marshal,
By W. S. DAGGETT, *Deputy.*

18. In the matter of the petition of Norman Markuson for a writ of *habeas corpus.* Writ. Filed Jan. 22, 1898. J. A. Montgomery, clerk, by E. R. Steele, deputy."

9¼ (*Copies of the Registry Return Receipts Referred to Above.*)

Registry return receipt, sent 3, 3, 1898.
Reg. No. 8. From post-office at Fargo, N. Dakota.
Reg. letter. } Addressed to Edward Winterer,
Reg. [parcel.]* } Post-office at Valley City, N. D.

After obtaining receipt below the postmaster will mail this card, without cover and without postage, to address on the other side.

Received the above-described registered { letter. / parcel.
(Sender's name on other side.)

Sign on dotted lines to the right. When delivery is made to other than addressee the name of both addressee and recipient must appear. } E. WINTERER. ....

Erase letter or parcel, according to which is sent.

When the registered letter or parcel accompanying this card is delivered the postmaster will require signature to the receipt on the other side, also on his record of registered deliveries, and mail this card, without cover, to address below.

A penalty of $300 is fixed by law for using this card for other than official business.

Post-office Department.
Official business.

Stamp here name of post-office
Valley City, N. Dak., Jan. 4, 1898, 7 p. m.
and date of delivery.

9½ Return to:
Name of sender: J. E. Cronan.
Street and number or post-office box: } .....
Post-office at Fargo, county of Cass, State of North Dakota.

[* Word enclosed in brackets erased in copy.]

Registry return receipt, sent 3, 3, 1898.
Reg. No. 9. From post-office at Fargo, N. Dakota.
Reg. letter. } Addressed to J. F. Cowan,
Reg. [parcel.]* } Post-office at Bismarck, N. D.

After obtaining receipt below the postmaster will mail this card, without cover and without postage, to address on the other side.

Received the above-described registered { letter. / parcel.
(Sender's name on other side.)

Sign on dotted lines to the right. When delivery is made to other than addressee the name of both addressee and recipient must appear. } J. F. COWAN. ..... M. J. O. ....

Erase letter or parcel, according to which is sent.

9¾ When the registered letter or parcel accompanying this card is delivered the postmaster will require signature to the receipt on the other side, also on his record of registered deliveries, and mail this card, without cover, to address below.

A penalty of $300 is fixed by law for using this card for other than official business.

Post-office Department.

Official business.

Post-office at { Stamp here name of post-office | Bismarck, N. Dak., Jan. 4, 8 a. m., 1898, rec'd. | and date of delivery. }

Return to:
Name of sender: J. E. Cronan.
Street and number or post-office box: ....
Post-office at Fargo, county of Cass, State of North Dakota.

Thereupon, afterwards, to wit, on the 25th day of January, 1898, a return to the writ of *habeas corpus* was filed in said matter; which said return is in words and figures following, to wit:

[* Word enclosed in brackets erased in copy.]

"*Return to Writ of Habeas Corpus in Matter of Norman Markuson.*

UNITED STATES OF AMERICA, } ss:
District of North Dakota, }

United States District Court.

To the honorable district court of the United States for the district of North Dakota:

I, N. F. Boucher, the warden of the penitentiary of the State of North Dakota, at Bismarck, of said State, to whom the within writ is directed, have now here before the Honorable Charles F.
10 Amidon, the judge of the said district court of the United States for the district of North Dakota, the body of Norman Markuson, the person in said writ named, as thereby directed and commanded; and I, the said N. F. Boucher, do hereby certify that the cause of the detention of the said Norman Markuson in said State penitentiary is a warrant of commitment, together with a certified copy of judgment and sentence made a part of said commitment, issued by the district court of the fifth judicial district of the State of North Dakota, directed to me, a copy of which is hereto annexed, marked 'Exhibit A,' and made a part hereof.

N. F. BOUCHER,
Warden of the Penitentiary of the State of North Dakota, at Bismarck, said State.

Dated this 24th day of January, A. D. 1898."

STATE OF NORTH DAKOTA, } ss:
County of Barnes, }

In District Court, Fifth Judicial District.

THE STATE OF NORTH DAKOTA *ex Rel.* P. J. MCCLORY, Assistant Attorney General, Plaintiff,
vs.
NORMAN MARKUSON ET AL., Defendants.

Proceedings in Contempt.

THE STATE OF NORTH DAKOTA
against
NORMAN MARKUSON, Defendant.

Commitment to State prison.

The State of North Dakota to the sheriff of the county of Barnes and to the warden of the State penitentiary, at Bismarck, in said State, Greeting:

You, the said sheriff, are hereby commanded to deliver to
11 the said warden of said penitentiary the body of Norman Markuson, now in your custody, who was found guilty of

criminal contempt of court and sentenced to be confined and imprisoned in the State penitentiary, at Bismarck, North Dakota, for and during the term of one year from twelve o'clock at noon of the 7th day of December, 1897, as will all appear by a certified copy of the judgment and sentence of the court ordering such imprisonment, hereto attached.

And you, the said warden of said State penitentiary, are hereby commanded to safely keep the said Norman Markuson until the expiration of the said sentence or until he shall be discharged therefrom by due course of law.

Witness the Honorable S. L. Glaspell, judge of the district court of the fifth judicial district, North Dakota, and my hand and the seal of said district court for Barnes county this 13th day of December, 1897.

[Seal District Court, Barnes County, North Dakota.]

(Signed) M. G. CUSHING, *Clerk.*

STATE OF NORTH DAKOTA, } ss:
County of Barnes, }

In District Court, Fifth Judicial District.

THE STATE OF NORTH DAKOTA *ex Rel.* P. J. MCCLORY, Assistant Attorney General, Plaintiff,
vs. against
NORMAN MARKUSON, Defendant.

Proceedings in Contempt.

STATE OF NORTH DAKOTA
against
NORMAN MARKUSON.

12 Judgment upon affirmance by the supreme court of judgment in said district court.

Whereas heretofore and on the 6th day of August, 1897, upon due trial herein had, this court found the said defendant, Norman Markuson, guilty of criminal contempt of court provided by section 7605 of the Revised Codes of the State of North Dakota, and that said contempt constituted the second offense of contempt under the said provision of said section 7605 of the Revised Codes of the State of North Dakota; and

Whereas on the said 6th day of August, 1897, this court issued its order in the following words, to wit:

"It is hereby ordered that the judgment and sentence of the court be rendered and pronounced in open court in the presence and hearing of the said defendant, Norman Markuson, and that the clerk enter the same upon the minutes of the court. The judgment and sentence against the said defendant, Norman Markuson, is that

he be imprisoned in the State penitentiary for the State of North Dakota for the period of one year.

Let judgment be entered accordingly.

By the court:

S. L. GLASPELL, *Judge.*

Dated August 6th, 1898.

Attest: M. G. CUSHING, *Clerk.* [SEAL.]"

And whereas on the said 6th day of August, 1897, the said defendant, Norman Markuson, being brought before the court in open court, and being duly sentenced by the court to be confined in the State penitentiary, at Bismarck, for the period of one year, in harmony with the order of said court; and

Whereas the defendant, Norman Markuson, appealed from the judgment and sentence of said district court to the supreme
13 court of the State of North Dakota, and the said supreme court has affirmed the judgment and sentence of said district court and caused a remittitur to be filed in the office of the clerk of the district court on the 7th day of December, 1897:

Now, therefore, upon motion of Edward Winterer, State's attorney for Barnes county, North Dakota, I do hereby further order and direct that the judgment of the supreme court in the case be, and the same is hereby, made the judgment of this court; and I further order and direct that the said defendant, Norman Markuson, be imprisoned in the State penitentiary, at Bismarck, State of North Dakota, for the period of one year from twelve o'clock noon of the seventh day of November, 1897, being the date of filing said remittitur in this court, and that a commitment issue to carry this judgment into effect.

Done this 10th day of December, 1897.

S. L. GLASPELL, *Judge.*

Attest: M. G. CUSHING, *Clerk.* [SEAL.]

STATE OF NORTH DAKOTA, } ss:
County of Barnes, }

District Court, 5th Judicial District.

I hereby certify that I have carefully compared the within instrument with the original now on file in this office, and that it is a true and correct copy of the same.

In witness whereof I have hereunto set my hand and official seal this 13th day of Dec., A. D. 1897.

[Seal Clerk Dist. Court, Barnes Co., N. D.]

M. G. CUSHING,
Clerk Dist. Court within and for Barnes Co., N. D.

14 THE STATE OF NORTH DAKOTA, } ss:
County of Barnes, }

In District Court, Fifth Judicial District.

THE STATE OF NORTH DAKOTA *ex Rel.* P. J. MCCLORY, Assistant Attorney General, Plaintiff,
vs.
NORMAN MARKUSON and MICHAEL E. MURPHY, Defendants.

Proceedings in Contempt.

THE STATE OF NORTH DAKOTA
vs.
NORMAN MARKUSON, Defendant.

Information having been made under oath that one Norman Markuson did commit the crime of contempt of court in and by violating the lawful provisions of an injunctional order issued under and pursuant to section 7605 of the Revised Codes of the State of North Dakota, which said information was duly filed in the office of the clerk of this court on the 17th day of June, A. D. 1897, and an attachment for contempt of court having been duly issued by this court, and the said defendant having been arrested and brought before this court, and having been duly arraigned, and having pleaded not guilty to the charge in the said information contained, and thereafter, and on the 3rd and 4th days of August, 1897, the said defendant being duly tried before this court on said charge of contempt of court, Edward Winterer, State's attorney for said Barnes county, and Herbert Root appearing for the State of North Dakota, and Messrs. Marion Conklin and Martin Remmen appearing
15 as counsel for the said defendant, and evidence being offered and produced on the part of the State, and also on the part of the said defendant, said evidence being duly considered by this court, whereupon the court makes and finds the following as its

Findings of Fact.

First. That on the 22nd day of June, 1896, a search warrant was duly issued by the Honorable Roderick Rose, judge of this court, in said case of The State of North Dakota *ex rel.* P. J. McClory, assistant attorney general, plaintiff, *vs.* Norman Markuson and Michael E. Murphy, defendants, directed to the sheriff or any constable or marshal of the county of Barnes, State of North Dakota, commanding such officer to search the following-described premises, lot No. —, in block No. twenty-five, in the original town site of Valley City, Barnes county, North Dakota, and to seize and hold any intoxicating liquors found thereon.

Second. That on said 22nd day of June, 1896, the said Honorable Roderick Rose issued a temporary injunctional order in the above cause, among other things enjoining and restraining the said defendants, Norman Markuson and Michael E. Murphy, their agents,

attorneys, and servants, in case the officer serving the said search warrant and said injunctional order should seize and take possession of said premises or any personal property found therein, from in any way interfering with said premises or said personal property, or any part thereof, after such possession should be taken by such officer, or from in any way disturbing the possession of such officer.

Third. The said search warrant and injunctional order were duly and personally served upon said defendant, Norman Markuson, in Valley City, Barnes County, North Dakota, on the 26th day of June, 1896, by one Hans O. Hagen, a duly qualified and acting constable of the said Barnes county.

16

Fourth. That the said officer, Hans O. Hagen, after serving the the said search warrant and the said injunctional order, took possession of the said premises and certain personal property found thereon, to wit, beer.

Fifth. That after the service of said search warrant and injunctional order upon the said defendant, Norman Markuson, and after the possession of the said premises and said personal property was taken by said officer, and while the said injunctional order was in full force and effect, the said defendant, Norman Markuson, with force and violence rescued and retook possession of the said premises and said personal property and removed and carr-ed away said personal property, to wit, a large quantity of beer, from the said premises and from the possession of the said officer.

Sixth. That the said defendant, Norman Markuson, was tried, found guilty, and convicted on the 29th day of June, 1895, for violating the lawful provisions of a certain injunctional order issued by the judge of this court under and pursuant to section 13 of chapter 110 of the Laws of 1890 of the State of North Dakota, being section 7605 of the Revised Codes of said State.

Conclusions of Law.

From said findings of fact the court makes the following as the conclusions of law:

That the said defendant, Norman Markuson, is guilty of criminal contempt of court as provided by section 7605 of the Revised Codes of the State of North Dakota, and that the said contempt is and constitutes the second offense of contempt under and against the provisions of said section 7605 of the said Revised Codes of the State of North Dakota.

17

Order for Judgment.

Pursuant to the facts found in the trial of the above-entitled cause by this court and its conclusions of law adduced therefrom, and on motion of Edward Winterer, State's attorney for Barnes county, North Dakota, and Herbert Root, assistant and special counsel, appearing for the State of North Dakota—

It is hereby ordered that the judgment and sentence of the court be rendered and pronounced in open court, in the presence and hear-

ing of the said defendant, Norman Markuson, and that the clerk enter the same upon the minutes of the court.

The judgment and sentence against the said defendant, Norman Markuson, is that he be imprisoned in the State penitentiary for the State of North Dakota for the period of one year.

Let judgment be entered accordingly.

By the court:

S. L. GLASPELL, *Judge.*

Dated August 6th, 1897.

Attest:

[SEAL.] M. G. CUSHING, *Clerk.*

And on the said 6th day of August, 1897, the said court, in the presence and hearing of the said defendant, Norman Markuson, and in open court, pronounced sentence upon the said defendant as follows, to wit:

"COURT: Mr. Markuson, in this case the court finds you guilty of the charge in the information, and that it is the second
18 offense. Have you any legal reason why sentence of the court should not be passed upon you at this time?

MARKUSON: No, sir.

It is the judgment and sentence of the court that you, Norman Markuson, be confined in the State penitentiary, at Bismarck, for a period of one year. You are committed to the custody of the sheriff."

The said defendant having appealed from the judgment and sentence of the said court to the supreme court of the State of North Dakota, and the said supreme court having affirmed the said judgment and sentence of the said district court, and the remittitur in said cause being filed in the office of the clerk of this court on the 7th day of December, 1897, that the said judgment and sentence be carried into effect.

STATE OF NORTH DAKOTA, } ss:
County of Barnes, }

District Court, 5th Judicial District, ss:

I hereby certify that I have carefully compared the within instrument with the original now on file in this office, and that it is a true and correct copy of the judgment and sentence in the above cause.

In witness whereof I have hereunto set my hand and official seal this 13 day of Dec., 1897.

[Seal Clerk Dist. Court, Barnes Co., North Dakota.]

M. G. CUSHING,
Clerk D-st. Court within and for Barnes Co., N. D.

VALLEY CITY, N. D., *Dec.* 13, 1897.

I hereby certify that the foregoing judgment and sentence are full

and correct copies of the judgment and sentence now on file
19 in the office of the clerk of the district court, Barnes county, N. D., in the matter of the State of North Dakota *vs.* Norman Markuson.

(Signed) CHAS. A. POLLOCK,
Judge District Court, 3rd Dist., Acting upon the Written Request of Hon. S. L. Glaspell, Judge Dist. Court, 5th Dist., of the State of North Dakota.

Attest: M. G. CUSHING, *Clerk.*

[Seal Clerk Dist. Court, Barnes County, N. D.]

"UNITED STATES OF AMERICA, }
District of North Dakota. }

United States District Court.

The President of the United States of America to N. F. Boucher, warden of the State penitentiary, at Bismarck, North Dakota, Greeting:

We command you that you have the body of Norman Markuson, by you imprisoned and detained, as it is said, together with the term and cause of such imprisonment and detention, by whatsoever name the said Norman Markuson shall be called or charged, before the Honorable Charles F. Amidon, judge of the district court of the United States for the district of North Dakota, at the chambers of said Honorable Charles F. Amidon, in the public building at Fargo, in said district, on the 24th day of January, 1898, at ten o'clock a. m., to do and to receive what shall then and there be considered concerning said Norman Markuson; and have you then and there this writ.

Witness the Honorable Charles F. Amidon, judge of the
20 district court of the United States for said district, at Fargo, in said district, this 3d day of January, in the year of our
[SEAL.] Lord one thousand eight hundred and ninety-eight.

J. A. MONTGOMERY, *Clerk.*

C. D. & THOS. D. O'BRIEN,
Attorneys for Petitioner."

Upon the back of said return appear indorsements in words and figures following, to wit:

"# 18. Writ of *habeas corpus.* Norman Markuson *vs.* N. F. Boucher. Returned and filed January 25th, 1898. J. A. Montgomery, clerk, by W. S. Daggett, deputy."

Thereupon, afterwards, to wit, upon said 25th day of January, 1898, the following order was made in said matter, as appears of record upon the journal of the court, at page #1796; which said order is in words and figures following, to wit:

"In the Matter of the Petition of NORMAN MARKUSON for a Writ of *Habeas Corpus.*

Comes now N. F. Boucher, as warden of the North Dakota State penitentiary, *of* Bismarck, North Dakota, and makes return to the writ of *habeas corpus* heretofore issued herein, with the body of said Norman Markuson in his custody, at the bar of this court. Said N. F. Boucher moves the court to quash the petition filed herein and dismiss the writ of *habeas corpus* heretofore issued herein; and said motion to quash having been argued and submitted to the court, now, after due consideration, it is—

Ordered that said motion to quash be, and the same hereby is, overruled."

21 And comes now said petitioner, by his attorney, C. D. O'Brien, Esq, and asks leave to file an amended petition; which motion is granted by the court, and after hearing arguments of the respective counsel the court continues the hearing until tomorrow morning at ten o'clock.

Thereupon, afterwards, to wit, on said 25th day of January, 1898, an amended petition was filed in said matter; which said amended petition is in words and figures following, to wit:

"United States District Court, District of North Dakota.

In the Matter of the Petition of NORMAN MARKUSON for a Writ of *Habeas Corpus.*

To the honorable the district court of the United States above named:

The petition and amended complaint of Norman Markuson respectfully shows and states to the court that this complainant is now confined in the State penitentiary of North Dakota, at Bismarck, in said State, and in custody of the warden of said penitentiary, N. F. Boucher; that this complainant has been so confined in said penitentiary since the 7th day of December, 1897, and he is therein confined under and pursuant to a certain pretended commitment issued out of the district court of the fifth judicial district of the said State of North Dakota in and for the county of Barnes, in said State.

22 That said commitment was made and issued under and pursuant to a certain pretended judgment and sentence of said district court of said State, made and entered in said court in certain proceedings had therein, wherein the State of North Dakota on the relation of P. J. McClory, assistant attorney general, was plaintiff and this complainant was defendant, and in and by the terms of which said judgment and sentence this complainant was sentenced to be imprisoned in the State penitentiary of the said State of North Dakota for the period of one year.

That thereafter and on the 6th day of August, 1897, this complainant perfected an appeal to the supreme court of the State of

North Dakota from said judgment and sentence, being in the meantime by said district court admitted to bail. That thereafter said cause duly came on for hearing in the supreme court of the said State of North Dakota, and such proceedings were duly had therein that said supreme court affirmed in all things the said judgment, conviction, and sentence of this complainant. Whereupon this complainant was, as is hereinbefore stated, on the 7th day of December, 1897, committed to said penitentiary and is now confined therein, as aforesaid, undergoing said sentence.

And this complainant further avers that all of said proceedings against this complainant which culminated in said sentence and confinement were had and carried on by the attorney general of said State of North Dakota under and pursuant to the provisions of section 7605 of the Revised Statutes of said State of North Dakota and of the other statutes of said State of North Dakota concerning and regulating said procedure.

23 And this complainant avers and says that the said statutes of the State of North Dakota providing for and regulating said proceedings were and are enacted, maintained, and enforced in violation of the Constitution of the United States, and particularly in violation of article five of the amendments to said Constitution of the United States, in this, that said statutes provide for the charging of a citizen with an infamous crime and proceeding to compel him to answer therefor and to be punished therefor without a presentment or indictment of a grand jury, and that said statutes are further in violation of the sixth article of the amendments to the Constitution of the United States of America, because said statutes deprive an accused in criminal prosecution of a right to trial by an impartial jury of the State and district wherein said crime shall have been committed.

That said statutes are further in violation of the Constitution of the United States, because it permits the trial and conviction of one accused of crime without being confronted with the witnesses against him.

That said statutes and the proceedings had thereunder and by which this complainant was convicted and imprisoned, as aforesaid, are further in violation of the constitutional rights of this complainant, as provided and enacted in section 1 of the fourteenth amendment of the Constitution of the United States, in this, that said statutes and the proceedings had thereunder operate and do abridge the privileges and immunities of citizens of the United States and deprive such citizens of liberty and property without due process of law, in that they deny to such citizens upon a criminal trial

24 the right of trial by jury, and deny to said citizens within the jurisdiction of North Dakota the equal protection of the laws, in that; that in and by said statutes it is provided that in prosecutions thereunder a conviction for contempt of court may be had without a trial by jury and a defendant sentenced to the penitentiary of said State thereunder, whereas in all other criminal prosecutions the citizens of the United States within said State and all persons being found therein are entitled to a trial by jury; and

further in this, that in such proceedings a contempt of court is punishable as an infamous crime, whereas in all other proceedings a contempt of court is punishable only as and for a misdemeanor.

And this complainant further alleges that said judgment and sentence under which complainant is now confined in said penitentiary are in violation of his constitutional rights, in that said judgment and sentence are in conflict with and in violation of the said fifth article of the amendments to the Constitution of the United States, in that this complainant has been held to answer for an infamous crime and has been sentenced to the State penitentiary of said State of North Dakota and is now undergoing a one year's sentence therein without ever having been presented or indicted by a grand jury and without there ever having been filed against him an information in the nature of such presentment.

This complainant further alleges that he diligently prosecuted his appeal from said judgment and sentence in said district court to the supreme court of said State of North Dakota; that the said supreme court of the said State of North Dakota has lately determined
25 said cause against him, and final judgment in said supreme court has been entered against him.

That this complainant is in straightened circumstances; that he is without means or power to prosecute or sue out a writ of error to the Supreme Court of the United States, which said Supreme Court of the United States, as this complainant is informed and believes, is the only tribunal in which said judgment of said State supreme court can be reviewed upon appeal or writ of error; that complainant likewise is without means, ability, or capacity to cause said appeal or writ of error to be presented and argued by counsel in said Supreme Court of the United States; that, as complainant is informed and believes, if he had the means and ability to prosecute said writ of error to said Supreme Court of the United States the same could not be brought on for hearing or heard or determined by said court prior to the time when said sentence would expire by its terms, and that this complainant is remediless in the premises unless this court shall issue to him its writ of *habeas corpus*.

That this complainant is a citizen of the United States, and entitled to all the privileges, rights, and immunities conferred upon such citizens by the Constitution of the United States.

Wherefore complainant prays that the writ of *habeas corpus* of this court issue, addressed to said N. F. Boucher, as warden of the penitentiary of said State of North Dakota, at Bismarck, in said State, requiring said warden to produce before this court, at a time and place to be fixed in said writ, the body of this complain-
26 ant, to the end that this complainant may be discharged from such sentence and custody because of the matters and things aforesaid.

NORMAN MARKUSON,
Complainant.

C. D. & THOS. D. O'BRIEN,
Attorneys for Complainant.

STATE OF NORTH DAKOTA, } ss:
County of Cass, }

Norman Markuson, having been by me duly sworn, doth depose and say that he is the complainant above named; that he has heard read the said complaint and knows the contents thereof, and that the same has been subscribed by him, and that said complaint is true, to the best of his knowledge and belief.

NORMAN MARKUSON.

Subscribed and sworn to before me this 25 day of January, A. D. 1898.

W. S. DAGGETT,
Dep. Clerk U. S. District Court, North Dakota. [SEAL.]"

Upon the back of said amended petition appear indorsements in words and figures following, to wit:

"# 18. United States district court, district of North Dakota. In the matter of the petition of Norman Markuson for writ of *habeas corpus.* Amended petition. Filed Jan'y 25, 1898. J. A. Montgomery, clerk, by W. S. Daggett, deputy. C. D. & Thos. D. O'Brien, attorneys for petitioner, 212 Globe bldg., St. Paul, Minn."

27 Thereupon, afterwards, to wit, on the 26th day of January, 1898, the following proceedings were had in said matter, as appears of record upon the journal of the court, at page 1797, in words and figures following, to wit:

"In the Matter of the Petition of NORMAN MARKUSON for a Writ of *Habeas Corpus.*

Comes now Norman Markuson, in the custody of N. F. Boucher, warden of the North Dakota State penitentiary, at Bismarck, North Dakota, and the hearing in said matter being concluded and taken under advisement by the court, it is—

Ordered that the said Norman Markuson shall be and remain in the custody of the marshal of the United States for the district of North Dakota, pending judgment herein and until the final order of this court.

And it is further ordered that a certified copy of this order be served upon the said N. F. Boucher, warden, as aforesaid."

Thereupon, afterwards, to wit, on March 31st, 1898, an order was made in said cause to file as part of the record a copy of the abstract in the case of The "State of North Dakota *vs.* Norman Markuson;" which said order is in words and figures following, to wit:

28 "District Court of the United States, District of North Dakota.

In the Matter of the Petition of NORMAN MARKUSON for His Discharge in a Writ of *Habeas Corpus*.

Upon the hearing of the above-entitled cause counsel for the petitioner offered in evidence in support of the petition a copy of the abstract in the case of The State of North Dakota *ex rel.* Peter J. McClory, assistant attorney general, plaintiff and respondent, *v.* Norman Markuson, informed against with Michael E. Murphy, defendant and appellant, on the appeal of that case to the supreme court of the State of North Dakota, which abstract was received in evidence and was the only evidence offered at said hearing, and it is now—

Ordered that said document be filed by the clerk as a part of the record in the above-entitled cause.

CHARLES F. AMIDON, *Judge*."

Upon the back of said order appear indorsements in words and figures following, to wit:

"#18. U. S. district court. In the matter of the petition of Norman Markuson, etc. Order to file abstract. Filed Mar. 31, 1898. J. A. Montgomery, clerk, by E. R. Steele, deputy."

Thereupon, afterwards, to wit, on the 31st day of March, 1898, a copy of the abstract in the case of The "State of North Dakota *vs.* Norman Markuson" was filed in said matter; which said abstract is in words and figures following, to wit:

29 STATE OF NORTH DAKOTA:

Supreme Court, October Term, 1897.

THE STATE OF NORTH DAKOTA *ex Rel.* P. J. MCCLORY, Assistant Attorney General, Plaintiff and Appellant,
vs.
NORMAN MARKUSON, Informed against with MICHAEL E. MURPHY, Defendant and Appellant.

Information in Contempt.

(Title.)

Edward Winterer, State's attorney in and for the county of Barnes and State of North Dakota, in the name and by the authority of the State of North Dakota, and by virtue of his said office, upon his oath, to the best of his knowledge, information, and belief, lays before the court herein information of the commission of a public offense, viz:

That the crime of contempt of court has been committed by Michael E. Murphy and Norman Markuson, both late of the county of Barnes, in the State of North Dakota, as follows:

On the 10th day of June, A. D. 1896, one Frank L. Kellogg
30 made affidavit that intoxicating liquors, to wit, beer and whiskey, were kept for sale, sold, bartered, and given away as a beverage on the premises known as lot No. four, in block No. twenty-five, in the original town site of the city of Valley City, in the county of Barnes and State of North Dakota, and that to the best of his knowledge, information, and belief Michael E. Murphy and Norman Markuson were conducting said business and making such unlawful sales, and that on the 5th day of June, A. D. 1896, the said affiant, Frank L. Kellogg, had purchased upon said premises intoxicating liquors as a beverage, and had drunk such intoxicating liquors as a beverage on said premises, and prayed that a search warrant might be issued by this court, to the end that said premises might be searched, as provided by law.

On the 16th day of June, A. D. 1896, one P. J. McClory, assistant attorney general of the State of North Dakota, made under oath, to the best of his knowledge, information, and belief, complaint in the name of the State of North Dakota against the aforesaid Michael E. Murphy and Norman Markuson, alleging the existence upon the said above described premises of a common nuisance, where intoxicating liquors were kept for sale as a beverage, and sold and bartered and given away as a beverage, and drunk as a beverage upon said premises, and where persons were permitted to resort for the purpose of drinking intoxicating liquors as a beverage, and that such common nuisance was so kept and maintained by the said Michael E Murphy and Norman Markuson, and prayed that said nuisence might be abated, and that an
31 injunctional order might be issued by this court, restraining the continuance of said common nuisance pending the determination of the action herein.

On the 16th day of June, A. D. 1896, the said P. J. McClory, assistant attorney general, as aforesaid, caused to be issued in the name of the State of North Dakota a summons against the said Michael E. Murphy and Norman Markuson, as defendandts, commanding them to answer said complaint within the time allowed by law.

On the 22nd day of June, 1896, the Hon. Roderick Rose, judge of this court, upon the aforesaid affidavit issued a search warrant, directed to the sheriff or any constable or marshal of the county of Barnes, in the State of North Dakota, commanding such officer to search said premises and to seize and hold any intoxicating liquors found upon said premises.

On the 22nd day of June, 1896, the said court also issued the temporary injunctional order prayed for in said complaint, enjoining and restraining said defendants, Michael E. Murphy and Norman Markuson, from using or permitting to be used said premises as such common nuisance, and also enjoining and restraining said defendants, their agents, attorneys, and servants, in case the officer serving said affidavit, search warrant, summons, complaint, and injunctional order should take possession of said premises or of any personal property found thereon, from in any way interfering with said prem-

ises or personal property or any part thereof after such possession should be so taken by such officer or from in any way disturbing the possession of such officer.

On the 26th day of June, A. D. 1896, the said affidavit, search warrant, summons, complaint, and injunctional order were placed
32 into the hands of Hans O. Hagen, a duly qualified and acting constable of said county of Barnes, for immediate service.

On the said 26th day of June, A. D. 1896, the said constable, Hans O. Hagen, upon said hereinbefore-described premises duly served upon each of said defendants, Michael E. Murphy and Norman Markuson, the said affidavits, search warrant, summons, complaint, and injunctional order by delivering to and leaving with each of said defendants true copies of each thereof, and proceeded to make search of said premises, as so commanded, and found thereon large quantities of intoxicating liquors, to wit, beer and whiskey, whereupon said constable, Hans O. Hagen, forthwith took possession of said premises and of said intoxicating liquor and other personal property found thereon, and afterwards carefully invoiced the same.

On June 29th, 1895, both said defendants, Michael E. Murphy and Norman Markuson, were convicted in this court of criminal contempt under chapter 110 of the Laws of 1890 of the State of North Dakota.

The said action is still pending in this court and said injunctional order still remains in full force and effect and has not been dissolved, vacated, or modified in any way.

Thereafter, on said 26th day of June, 1896, while said injunctional order still remained in full force and effect and while said constable, Hans O. Hagen, remained in possession of said premises and personal property, he having locked up the same and left it temporarily in charge of Delevan Carlton and Alexander Cummings,
the said defendants, Michael E. Murphy and Norman Marku-
33 son, gathered a large mob of lawless persons to their assistance and with great force and violence broke upon said premises and the building thereon and drove away the said custodians thereof and removed the said intoxicating liquors and rescued said intoxicating liquors from the possession of said constable and assaulted and drove from said premises said constable, thereby disobeying the mandate and violating the said order of this court, whereby this court was and is hindered, obstructed, and embarrassed in the discharge of its duties and in the exercise of its authority, and whereby the administration of justice is delayed and hindered and the authority of this court is brought into contempt, contrary to the form of the statutes for such case made and provided and against the peace and dignity of the State of North Dakota.

Wherefore The State of North Dakota, the plaintiff herein, by the said Edward Winterer, State's attorney as aforesaid, prays that this court do issue an attachment to the sheriff of the county of Barnes, in said State, commanding him forthwith bring them before this court to be dealt with according to law.

EDWARD WINTERER.

W. W. SMITH,

Notary Public for the County of Barnes, State of North Dakota.

34 STATE OF NORTH DAKOTA, } ss:
County of Barnes, }

Hans O. Hagen, being first duly sworn according to law, on his oath deposes and says that he has heard read the foregoing information and knows the contents thereof, and that the same is true to his own knowledge.

HANS O. HAGEN.

Subscribed and sworn to before me this seventeenth day of June, A. D. 1897.

W. W. SMITH,
Notary Public in and for the County of Barnes and State of North Dakota.

Attachment.

(Title.)

The State of North Dakota to the sheriff of the county of Barnes, Greeting:

You are hereby commanded to attach Michael E. Murphy and Norman Markuson and bring their bodies forthwith before the judge of the district court for the fifth judicial district and county of Barnes, at the court-house, in said county, to answer certain charges of contempt committed against said court in the manner following, to wit:

That on or about the 22nd day of June, 1896, a certain injunctional order was issued by the Honorable Roderick Rose, judge of this court, in the case of The State of North Dakota *ex rel.* P.

35 J. McClory, assistant attorney general, plaintiff, *vs.* Michael E. Murphy and Norman Markuson, defendants, among other things enjoining and restraining the said defendants, their agents, attorneys, and servants, from using or permitting to be used the building on lot four, in block 25, in Valley City, North Dakota, as a common nuisance, and further restraining and enjoining and restraining said defendants, their agents, attorney-, or servants, in case the said officer serving the said injunctional order should seize and take possession of the said premises or any personal property found thereon, from in any way interfering with the said premises or said personal property or any part thereof after such possession should be taken by such officer, which said order was duly and personally served upon the said defendants on the 26th day of June, 1896, and possession of said premises taken by Hans O. Hagen, the officer serving said order, and also a large amount of beer and whiskey found thereon, and that while said action was still pending, after the service of the said order upon the said defendants and while the same was in full force and effect, on the said 26th day of June, 1896, the said defendants, Michael E. Murphy and Norman Markuson, did wilfully and unlawfully disobey and violate the provisions of said injunctional order by retaking possession of said premises and said whiskey and beer from the custody of said Hans O. Hagen while in

lawful discharge of his duties in obedience to the mandate of this court, and to do further and receive what said court shall then and there consider in this behalf.

Witness the Honorable S. L. Glaspell, judge of said district court aforesaid, at Valley City, in said county, this 17th day of June, A. D. 1897.

[SEAL.] M. G. CUSHING, *Clerk.*

36 *Summons.*

(Title.)

The State of North Dakota to the above-named defendants:

You are hereby summoned and required to answer the complaint of the plaintiff in the above-entitled action, a copy of which is herewith served upon you, and to serve a copy of your answer to said complaint on the subscriber, at his office, in the city of Devils Lake, in the county of Ramsey, State aforesaid, within thirty days after the service of said summons upon you, exclusive of the day of such service, and if you fail to answer the said complaint within the time aforesaid the plaintiff in this action will apply to the court for the relief demanded in the complaint.

Dated at Devils Lake, North Dakota, this 16th day of June, A. D. 1896.

P. J. McCLORY,
Assistant Attorney General, State of North Dakota,
Attorney for Plaintiff, Devils Lake, North Dakota.

Complaint.

(Title.)

The complaint of the plaintiff shows to this court:

I.

That P. J. McClory is now and since the 3rd day of December, A. D. 1895, has been duly appointed, qualified, and acting assistant attorney general of the State of North Dakota, and that he is
37 the said relator in the above-entitled action and a resident and citizen of the State aforesaid.

II.

That from and since the 5th day of June, A. D. 1896, the said defendants, Michael E. Murphy and Norman Markuson, in a building upon the following-described premises, situated in the county of Barnes, State of North Dakota, to wit, lot 4, in block 25, of the original town site of the city of Valley City, Barnes county, N. D., have maintained, have permitted to be maintained, do now maintain and permit to be maintained a common nuisance, to wit, a place where intoxicating liquors, to be used as a beverage, are kept for sale, gift, barter, trade, and delivery, where said liquors are sold, given away, bartered, traded, and delivered to be drank as a beverage, and where

persons are permitted to resort and do resort for the purpose of drinking intoxicating liquors as a beverage.

III.

That since the 5th day of June, A. D. 1896, the said Norman Markuson has sold intoxicating liquors at said place to divers and sundry persons and particularly as follows: On said 5th day of June, 1896, one Frank L. Kellogg purchased whiskey and beer from said Norman Markuson upon said premises to be drank as a beverage; is now selling such liquors continuously and as a common practice and business; has permitted and still permits intoxicating liquors to be used and drank as a beverage in and upon said premises, and knowingly permits persons to resort to said place for the purpose of drinking intoxicating liquors as a beverage.

IV.

38 Plaintiff alleges on information and belief that the defendant Michael E. Murphy was on the 5th day of June, A. D. 1896, ever since has been, and now is the owner in fee of the said premises hereinbefore described where said common nuisance is kept and maintained as aforesaid and leases and rents the same to the said Norman Markuson.

That no druggists' permit to sell or barter intoxicating liquors in this place where said common nuisance is kept and maintained has been issued to said defendant by the judge of the county court of said Barnes county.

VI.

Plaintiff alleges on information and belief that the said defendants will continue to keep and maintain said common nuisance and permit the same to be kept and maintained after the commencement of this action, unless restrained by the injunctional order and decree of this court.

Wherefore plaintiff prays judgment:

First. That the premises hereinbefore described be adjudged and decreed a common nuisance, and that the same be abated in due form of law.

Second. That the said defendants, agents and servants, and each of them be perpetually enjoined from using or permitting to be used the said premises, or any part thereof, as a place where intoxicating liquors are sold, bartered, or given away, or kept for sale, barter, or giving away otherwise than allowed by law, and from keeping and maintaining said premises, or any part thereof, as a place where persons are permitted to resort for the purpose of drinking intoxicating liquors as a beverage.

39 Third. That a temporary injunctional order be issued forthwith enjoining the defendants, their agents or servants, until further order of the court, from keeping open or permitting to be open the said above-described premises as a common nuisance, and from selling, bartering, giving away, or keeping for sale, barter, giving away, or use at, in, or about said premises any intoxicating liquors,

and from permitting such liquors to be sold, bartered, or given away or kept for sale, barter, giving away, or use at, in, or upon said premises.

Dated at Devils Lake, in the county of Ramsey, North Dakota, this 16th day of June, A. D. 1896.

P. J. McCLORY,
Assistant Attorney General, State of North Dakota,
Attorney for Plaintiff, Devils Lake, North Dakota.

STATE OF NORTH DAKOTA, } ss:
County of Ramsey, }

P. J. McClory, being duly sworn, on oath says that he is the duly appointed, qualified, and acting assistant attorney general in and for the State of North Dakota and attorney for the plaintiff that he has read the foregoing complaint, knows the contents thereof, and that the same is true to the best of his knowledge, information, and belief.

P. J. McCLORY.

Subscribed and sworn to before me this 16th day of June, A. D. 1896.

A. S. WEMPLE,
Notary Public, North Dakota.

40 *Affidavit.*

STATE OF NORTH DAKOTA, } ss:
County of Stutsman. }

(Title.)

Frank L. Kellogg, being first duly sworn, on oath deposes and says that intoxicating liquors, to wit, whiskey and beer, are kept for sale, sold, bartered, and given away as a beverage on the following-described premises, to wit:

Lot four, in block twenty-five, of the original town site in the city of Valley City, Barnes county, N. D.

And that (to the best of knowledge, information, and belief of affiant) Norman Markuson — conducting said business and making such unlawful sales, and the basis of affiant's knowledge and belief is as follows:

That on the 5th day of June, 1896, deponent purchased upon said premises intoxicating liquors as a beverage, and the same was so drunk as a beverage.

And a search warrant is prayed for to the end that the said premises may be searched, as provided by law, at the time of service of an injunctional order in the above-entitled action.

FRANK L. KELLOGG.

Subscribed and sworn to before me this 10th day of June, A. D. 1896.

B. F. BIGELOW,
[SEAL.] *Notary Public, North Dakota.*

41 *Search Warrant.*

(Title.)

The State of North Dakota to the sheriff or any constable or marshal of Barnes county:

In the above-entitled action, a summons and complaint having been duly issued, and an injunctional order restraining the above defendants, Michael E. Murphy and Norman Markuson, from selling or keeping for sale, barter, or delivery any intoxicating liquors of any kind on the following-described premises, to wit, lot 4, in block 25, of the original town site of the city of Valley City, Barnes county, N. D., having been granted by the court herewith, and an affidavit having been presented to this court, together with the papers aforesaid, setting forth that intoxicating liquors, to wit, whiskey and beer, are kept for sale and are sold, bartered, and given away in violation of the law on the above-described premises:

Now, therefore, you are hereby commanded, at the time of serving the aforesaid injunctional order, bearing even date herewith, to diligently search the premises above described and carefully invoice all articles found therein, used in or about the carrying on of the business aforesaid, and if upon such search you shall find upon said premises any intoxicating liquors of any kind you shall take the same into custody and securely hold the same to abide the final order and judgment of this action, and also take and hold possession of all personal property found on such premises and take and hold possession of such premises and keep the same closed

42 until such final judgment. Hereof fail not.

Dated this 22nd day of June, A. D. 1896.

RODERICK ROSE, *Judge.*

Endorsed: State of North Dakota, 5th judicial district, county of Barnes, ss: Filed in the office of the clerk of the court for the county of Barnes, North Dakota, this 27th day of July, 1896. H. O. Sterl, clerk of said court.

Injunctional Order.

(Title.)

It appearing to the satisfaction of the court by the verified complaint and the affidavit of Frank L. Kellogg, hereto attached, and the statute in such cases made and provided that the defendants should be restrained from the commission of the acts hereinafter enjoined, and that the commission or continuance of the acts set forth in the complaint during the pendency of this action would produce public injury, and it appearing by said complaint and the affidavits that the defendants during the pendency of this action are doing or procuring and suffering to be done and threatened or are about to do, procure and suffer to be done the acts hereinafter enjoined:

Now, therefore, on motion of P. J. McClory, assistant attorney general in and for the State of North Dakota, attorney for plaintiff—

It is ordered that the defendants, Michael E. Murphy,
43 Norman Markuson, agents, attorneys, and servants, and each of them, are hereby enjoined and restrained until further order of this court from using or permitting to be used the following-described premises, to wit, lot 4, in block 25, of the original town site of the city of Valley City, Barnes county, N. D., as a place for the sale of intoxicating liquors or as a place for keeping for sale intoxicating liquors of any kind, character, or description, otherwise than by the authority of a druggist's permit, as provided by law, and from permitting intoxicating liquors to be drank in, upon, or about said premises, and the defendants and each of them are enjoined and restrained until the further order of the court from keeping or permitting to be upon the said above-described premises, and from selling, bartering, or giving away, and from keeping for sale, barter, or use about said premises, and from permitting to be drank upon said premises any vinous, malt, spirituous, fermented, or other intoxicating liquors, and from permitting said liquors to be sold, bartered, or given away, or to be kept for sale, barter, delivery, or use at, in, or about said premises; and if the sheriff, constable, or marshal, or any other officer serving or executing the summons, complaint, affidavit for search warrant, search warrant, injunctional order, or any other order of this court issued in said action shall take possession of said premises or any part thereof, or of any personal property found in or upon said premises, the defendants, their attorneys, agents, and servants, and each of them are hereby restrained and enjoined from interfering in any way whatever with said premises or personal property or any part thereof after such possession
44 is taken, and from entering into said premises so taken possession of or disturbing in any manner the possession of said sheriff, constable, or marshal, or other officer, until the further order of this court.

Dated at Jamestown, N. D., this 22nd day of June, A. D. 1896.

By the court:

RIDERICK ROSE, *Judge.*

Endorsed: State of North Dakota, 5th judicial district, county of Barnes, *ss:* Filed in the office of the clerk of the district court for the county of Barnes, North Dakota, this 27th day of July, 1896. H. O. Sterl, clerk of said court.

Return of Officer.

(Title.)

I, Hans O. Hagen, a duly elected, qualified, and acting constable of the said county and State, do hereby certify and return—

That the summons, complaint, affidavit for search warrant, search warrant, and injunctional order in the above-entitled action and hereunto attached came into my hands for service on the 26th day of June, 1896.

On said day I served all the aforesaid papers personally on both of the above-named defendants by delivering to and leaving with each of them a true copy of each of the above-mentioned papers, the originals of which are hereto attached. Thereupon, and after the service of said injunctional order and all other papers as above described, I entered the premises described in said search
45 warrant and made a search in accordance with the mandate of the court therein. I found on said premises a large quantity of intoxicating liquors, to wit, lager beer and whiskey, and thereupon took possession of the same and locked up the premises.

HANS O. HAGEN.

Subscribed and sworn to before me this 25th day of July, 1896.

H. P. SKRANSTAD,
Justice of the Peace.

Fees	$55.77
Ad. def't	3.77
	$59.54

Said defendant, Norman Markuson, having been placed under arrest pursuant to said attachment writ and having been brought into court on the 3rd day of August, 1897, the following proceedings were had before Honorable S. L. Glaspell, judge of the 5th judicial district in and for Barnes county, State of North Dakota, to wit:

Thereupon defendant, being arraigned and before plea, interposed the following motions; which were overruled by the court; to which ruling the defendant excepted; which exception was duly allowed.

Motion.

(Title.)

The defendant, by his attorneys, Marion Conklin and M. E. Remmen, moves that the information and attachment herein be dismissed and quashed upon the following grounds, viz:

46 First. That the search warrant set forth in said information directing the seizure of certain property, and the injunction therein set forth enjoining any person from interfering with the officer's possession of the same after it had been seized, are void for the following reasons, to wit:

That said search warrant is contrary to the provisions of section 18 of the constitution of the State of North Dakota in this, that it is unreasonable, vague, and indefinite, and does not particularly describe the place to be searched or the things to be seized.

Second. That it does not appear from the affidavit or information herein that the officer executing said search warrant executed and returned the same within ten days, as provided by section 3471 of the Code of North Dakota, and that the same had not become void by reason of the failure of said officer to execute and return the same within the time provided by said section 3471.

Third. That the provisions of section 7605 of the Code of North Dakota, authorizing the issuance of said search warrant and directing the officer that in case he finds intoxicating liquors on the premises directed to be searched he is to seize and take into his hands all personal property found on said premises, is in conflict with section 13 of the constitution of the State of North Dakota, which provides that no person shall be deprived of life, liberty, or property without due process of law, and that the search warrant set forth in the information herein issued in pursuance thereof is void.

Fourth. That there is another remedy provided by statute for the offense charged in the information herein.

MARION CONKLIN,
MAR-IN E. REMMEN,
Attorneys for Defendant.

47 *Motion.*

(Title.)

Then the defendant demands the right to plead and be tried by the laws regulating criminal contempt, as defined by chapter 34, article 1, of the Code of Civil Procedure, for the reasons that the allegations and averments in the information do not constitute contempt, as defined by section 7605.

The contempt described in section 7605 only relates to the contempt for disobedience of the injunctional order as permitting the enjoined premises to be used for the purposes constituting the nuisance complained of, which is the only injunction specifically authorized by that section; neither was any further injunction prayed for in the complaint.

That that portion of the injunctional order mentioned and set forth in the information herein with which the defendant is charged of violating is in excess of the prayer of the complaint, and therefore erroneous.

MARION CONKLIN,
MARTIN E. REMMEN,
Attorneys for Defendant.

After the overruling of said motions defendant Norman Markuson enters a plea of not guilty.

Thereupon the defendant, in open court, demands a trial by jury; which request and demand was denied by the court; to which ruling defendant duly excepted; exception allowed by the court.

Whereupon, the defendant being placed upon trial before the court without a jury, the following evidence was introduced:

48 HANS O. HAGEN testified that he was a duly elected and qualified constable; that he served original in-unctional order, summons, and complaint, together with search warrant, on the 26th day of June, 1896.

Q. What did you find in the building at the time you served the papers?

A. Why, a few bottles of beer in the cooler behind the bar and some cases marked Schli-z beer. I did not examine the cases to see whether it was Schlitz beer or not, but that was the label that was on them.

Q. Did you find any whiskey?

A. There was a bottle in there that looked like whiskey, I did not taste it.

When I went in with the papers Markuson was standing at the bar, and I took possession of the premises, drove him out, and locked up the building. I told three men to watch it. Alex. Cummings and Mr. Carlton were outside of the building. I then went away and came back and found the doors broken open. I looked to see if the beer bottles were all out. I tried to take an invoice, and the crowd came in there and commenced to throw billiard balls at me. One of the crowd threw them from the outside of the building. The crowd came in at the back door and we went into the front room and we had to go through the front room to go out on the street and there was quite a mob came in. I cannot tell who threw the bill-ard ball. I made no attempt to go into the building after they threw the bill-ard balls at me. I was in the building twice that day—first, when I served the papers; second, when I came back to invoice and it was broken open. Mr. Carlton and I made an inven-
49 tory of what we found. The inventory contained some cases of beer and two or three bottles that were in the cooler. I do not remember exactly what it contained, and the counter and some furniture. I think the inventory contained ten cases; whether they were all full with beer I do not know. It was marked Schlitz beer. I found a bottle that looked like whiskey, although I would not swear to that. I found some beer cases, beer bottles, chairs, and a counter, a regular saloon counter. This was downstairs, on the first floor, in the back part of the building.

Cross-examination:

I don't think that I read the papers to Markuson. I handed him a copy of the papers and told him that it was a search warrant and injunctional order, and that I wanted possession of the building. It was in his place of business. The search warrant ordered me to search lot 4, block 25. It does not mention any building; it is supposed to be the building thereon. Mr. Root told me this was block 25. I searched no other place on that lot. All I know about that being beer was by the label. I did not make this invoice from actual count. I cannot say that there were ten cases. Yes; I said the ca-es were full. I took hold of one. It had the appearance of being full. I did not see Markuson in the crowd that broke in. Markuson did not remonstrate when I notified him to be present and invoice. He went out peaceably. He made no threats or anything of the kind, and I put the locks on the doors without any assistance. I requested Murphy, the owner of the building, to open the door when I first

went there, and he informed me that it was rented and that
50 he had nothing to do with it. I heard some one on the inside and asked them to open the door, and I told them I had a search warrant and if they failed I would break in, and nobody answered and I broke open the door.

Q. You don't know whether they heard your request or not?

A. They must have heard it. There is no question about it.

DELEVAN CARLTON called and sworn on behalf of the State:

I was in Valley City on the 26th day of June, 1896, and was called upon to assist in serving some papers by officers in particular cases. The Markuson case is one of them. I am not acquainted with Norman Markuson. This is the man that is called by that name. I was informed that he was engaged in 1896 in selling liquor unlawfully. I did not know his place of business until shown me. I was on Main street not far from the place kept by Patrick McNulty, on the east side of Main street. It was a frame two-story building with a store front. When I first got there I saw a crowd around the back of the building. After awhile I was asked to go into the building with Mr. Hagen and assist in the inventory. I came to the rear of the building and saw a dray-load of stuff taken away and another made up after that, after which we started to make an inventory and took an inventory of the stuff. The building was known as the Murphy building. I heard it so called. We went into the room opening off the street and took an inventory, and a crowd came into the front room and interfered with our work.

There were some appliances, I should think, that belonged
51 to a saloon, glasses and a counter on the east side of the building and some glasses, chairs, and a cooler back of the counter. We found some empty bottles supposed to be beer bottles. I do not remember seeing any beer bottles filled. I saw them hauling out of the building cases, I think, labelled Schlitz beer. I stood right alongside of them. I could not say how many. It was a full dray-load. A two-horse wagon hauled away two loads. The most of it was taken from the Murphy place. I have no recollection of seeing Markuson until I saw him in this court at this time. I saw no acts of violence. I heard some threats while we were in the room taking the inventory. Some solid projectiles were hurled at us, striking against the end of the building. I was told it was a billiard ball. After that Mr. Hagen stopped his inventory and I followed him out. I do not remember anything that was said. I did not see the defendant on the premises.

HERBERT ROOT called and sworn on the part of the State:

I am acquainted with Norman Markuson and have known him a little over two years. This is the man. He was engaged in running a blind pig on Main street, in the city of Valley City, county of Barnes. I placed in the hands of Hanss O. Hagen some papers against Norman Markuson to be served. Mr. Hagen went to the building, which is situated on lot 4, block 25, in Valley City. I afterwards went down there and saw a crowd at the rear of the building

removing cases of beer and placing them on the dray. The
52 defendant Markuson was there taking out the liquor and putting it on the dray. The defendant Markuson placed a case on the dray labelled Schlitz Brewing Company beer and assigned different ones to help him. I was standing in the street in front of the building, probably 50 feet back. I do not know whether this was after the papers were served. All that I know about the contents — these cases is from the label on the boxes. I am positive that this occurred at the Norman Markuson place, the Murphy building.

Cross-examination:

Q. How do you know that he was running a blind pig?
A. Because he had appliances so that you could not see what was going on. I saw him going in and coming out frequently.

EARNEST WALTEMATE called and sworn on behalf of the State:
I am city marshal of the village of Sanborn. I was in Valley City on the 26th day of June, 1896, at the place known as the Murphy and Markuson building. I cannot say that I saw the defendant Markuson there. There was a large crowd there handling these cases. I started in, and the crowd gathered around me and I could not do anything and I walked out of the door onto the street. I was not acquainted with the defendant Norman Markuson at that time and do not know if he was there. I don't know of my own knowledge whether this was the Murphy building or whether Norman Markuson had anything to do with the building or not.

G. GOMESTAD called and sworn on behalf of the State:
53 I am a drayman, residing at Valley City, and was engaged in draying — 1896. I am acquainted with Norman Markuson, the man sitting there; have known him nine or ten years. I remember the raid made on the blind pigs on the 26th day of June, 1896. I was called upon to take out of the Murphy building, the one occupied by Markuson, several cases of beer and other articles. It was in the afternoon. I do not remember the hour. I could not state who called me. I cannot swear whether it was Markuson or not. The person who called me asked me to drive back of the building known as the Murphy building. I could not say what kind of a looking man it was. They wanted me to turn my team around and back it afterwards. I could not state who asked me to do it. I sat on the seat of the dray and was looking towards the building and the cases were put upon my dray. I could not say who put them on, there were so many people there. I might have known at the time, but I do not now. No one has talked to me about this case since the matter occurred. I have hauled some cases for Markuson. I will not swear that I did not see Markuson that day. It might have been Markuson that told me to drive over there. I could not say that Markuson put any of the beer on the dray; might have been half a dozen different ones. I cannot say how many cases I had. There were quite a few. I hauled the cases down to a building southwest.

I think it was occupied by Markuson, but I do not know whether it was or not. It was a dwelling-house. They took the stuff off the dray and piled it on the ground. I cannot say who did it. I cannot say who told me to drive there. I don't think Markuson rode down with me on the top of the dray. I don't think any one
54 was on the dray with me. I did not place the cases in the cellar at the Markuson place. They were left outside of the house, in the yard. I do not know how many cases were unloaded. There was a large crowd of people there. I cannot state how many. I took no whiskey barrels, beer kegs, cider or gin barrels away from there. It was not dark. I cannot point out any person who told me to take them off the dray. I did not take any particular notice who was there. It was a long time ago. I do not know who asked me to drive there. I do not think it was Norman Markuson who asked me to haul these goods away. I do not remember seeing Markuson there at the building. There was no evidence.

Cross-examination:

This occurred between three and five o'clock in the afternoon. I did not see Markuson there. I would not swear that it was Norman Markuson that employed me to haul this stuff away. The cases I hauled looked like beer cases. I do not know what was in them. I did not handle the cases. Markuson might have been around there in the crowd. I did not see him. I cannot say that he was.

O. N. RUSHFELT called and sworn on behalf of the State:

I reside in Valley City; have known Herbert Root about seventeen years; have lived here about seventeen years; have known Markuson ever since he came here; was in Valley City on the 26th day of June, 1896. I remember what occurred at the Murphy building on that date. I saw Mr. Root there on the sidewalk
55 near the building. They had a dray standing at the back of the building. There was quite a crowd around and considerable excitement. I presume I saw Markuson afterwards. I did not see him at the time. I saw Murphy there. I saw him coming from the back of the building. I cannot say that I saw Markuson on the premises at the time the dray was there.

SEVER RITEN called and sworn on behalf of the State:

I live southwest from Valley City about ten miles. I know Markuson by sight. I was in town on the 26th day of June. I saw Mr. Root there at the time. I saw Markuson there on the sidewalk. He was standing on the sidewalk. I also saw the dray standing there, and a team attached to the wagon. I do not think I saw Markuson there at all. I saw him go into the back part of the building. The dray was standing ten feet from the back door. I did not see him load anything on the dray. I was there ten or twenty minutes and the dray went away while I was there. I remained till it came back a second time. I saw them put on one load. I only saw one load leave there. I saw Markuson go into the back door, but I did not see him put anything onto the wagon. There was one man on

the top of the dray when it drove away. I was there before any boxes were put on the wagon. They were put on by a stranger to me. Markuson did not, to my knowledge, carry any of the goods out of the building. I do not know whether Markuson was there when the dray left. He was there at the time the dray was loaded.

55½ State rests.

NORMAN MARKUSON called and sworn in his own behalf:

I am the defendant in this action and remember when Hans O. Hagen came to my place on the 26th day of June, 1896. I went out with Hagen and the front and back doors were locked; the side door was unlocked. When we went out I stayed on the sidewalk while waiting for Hagen to return. He said he would be back in five minutes and take an inventory of the stuff. He came back in about two minutes, and I asked him if he was ready, and he said he would have to go and get other papers, and I went away uptown to find out about the matter and how he could come and take possession of my place and bust in the door without papers. When I came back the doors was open and a wagon driving away and four or five fellows in the building. I did not direct or in any way interfere with the taking of the stuff. I saw the stuff down in my yard. I asked Murphy why he took it down there. There was no one at my home when the stuff was taken there. Mr. Hagen never has asked me for this property since. When I went into the building I chased the boys out, locked the door and turned the keyes over to Murphy, and never went into the building after that. I had another place of business up the street, and had stopped doing business in the Murphy building two or three days prior to this.

The door was locked when Hagen came. He broke open the door.

56 Cross-examination.

By Mr. WINTERER:

I turned the keyes over to Mr. Murphy that evening after I locked the place up, on the 26th day of June, 1896. The keyes were turned over to Murphy after the stuff was taken out. Murphy lived upstairs and had keyes to the building. I rented the downstairs and had keyes for the three doors. I rented just a part of the building. It was after the time when Hagen first came into the back door. I was in the back room settling up my business with Murphy. Ed. Larue and Thos. O'Malley were there playing cards. Mr. Hagen smashed the door in. I asked him what reason he had for breaking in the door, and he said he had some papers. I asked him for his authority, and he said he did not have to show it. He took a bunch of papers and threw them on the pool table. I did not look at them at that time. I did when I came back and locked up the building. After Hagen threw down the papers he told Murphy to go and get a padlock, and he went and got the lock. Hagen remained there a few minutes and then locked the door with a padlock on the outside. O'Malley, Larue, Murphy, and myself went

out. I staid there for a little while waiting for Hans to come back, as he told me that he wanted me to help him to make an inventory. When he returned, in about two minutes, I asked him if he was ready to go in, and he said he would have to get other papers to make it. I did not see him take an inventory. I then went uptown to see about the matter and to see what right he had to take possession of the place when he had to have other papers. When I returned, in about 15 minutes, I first learned that the stuff was taken out. The door was open and I did not
57 see the padlock. It was on when I went away. The next I saw of the stuff it was on the ground in my yard. I went back uptown and told Murphy to take it away. He said he would after a little. It was gone when I went back downtown in the evening. I don't know what dray hauled the stuff away. I don't know what they did with the other boxes. The team was leaving the building with the stuff when I came back. I did not see where they were going. I went home after locking up the building. It was in about ten minutes that I reached home and found the stuff there. I then went downtown to hunt up Murphy. I told him that he had no business to haul the stuff down to my premises. Murphy told me that he sent it there. I found the cases there. I did not open the cases. I did not see the kegs. Hagen said he had some papers and threw them down on the pool-table. He did not read the papers at all. After the stuff was taken I took the papers up.

State now offers in evidence the summons, complaint, in The State of North Dakota *ex rel.* Martin H. Wilberg, plaintiff, against Norman Markuson, defendant, dated December 12th, 1894, together with the affidavit for search warrant, search warrant, injunctional order, dated on the same date, the information in the contempt proceedings against this defendant, the order for attachment, the record of the court showing the trial of the defendant for violating said injunctional order, and the judgment of the court finding him guilty of violating said injunctional order in this, to wit, that between the 29th day of December, 1894, and June 10th, 1895, this named defendant kept a place for persons to resort for the purpose
58 of drinking intoxicating liquors as a beverage, situated upon lot 4, block 25, of the original town site of the city of Valley City, Barnes county, North Dakota, as will more fully appear by the affidavits of Herman Winterer, State's attorney of said county, and Ole Abrahamson; that thereupon the defendant was found guilty, sentenced to be imprisoned in the county jail of Barnes county for a period of ninety days and to pay a fine of $200.00, defendant having thereafter appealed said case to the supreme court of this State and the judgment of the lower court was affirmed and the defendant punished thereunder.

Thereupon the case is closed. The court now makes and files his findings of fact, conclusions of law, and order for judgment as follows:

Findings of Fact and Conclusions of Law and Order for Judgment.

First. That on the 22nd day of June, 1896, a search warrant was duly issued by the Honorable Roderick Rose, judge of this court, in said case of The State of North Dakota *ex rel.* P. J. McClory, assistant attorney general, plaintiff, *vs.* Norman Markuson and Michael E. Murphy, defendants, directed to the sheriff or any constable or marshal of the county of Barnes, State of North Dakota, commanding such officer to search the following-described premises, lot No. —, in block No. twenty-five, in the original town site of Valley City, Barnes county, North Dakota, and to seize and hold any intoxicating liquor found thereon.

59 Second. That on the said 22nd day of June, 1896, the said Honorable Roderick Rose issued a temporary injunctional order in the above cause, among other things, enjoining and restraining the said defendants, Norman Markuson and Michael E. Murphy, their agents, attorneys, and servants, in case the officer serving the said search warrant and said injunctional order should seize and take possession of said premises or any personal property found thereon, from in any way interfering with said premises or any said personal property or any part thereof after such possession should be taken by such officers or from in any way disturbing the possession of such officer.

Third. The said search warrant and injunctional order were duly and personally served upon the said defendant, Norman Markuson, in Valley City, Barnes county, North Dakota, on the 26th day of June, 1896, by one Hans O. Hagen, a duly qualified and acting constable of the said Barnes county.

Fourth. That the said officer, Hans O. Hagen, after serving the said search warrant and the injunctional order took possession of the said premises and certain personal property found thereon, to wit, a large quantity of intoxicating liquors, to wit, beer.

Fifth. That after the service of the said search warrant and the said injunctional order upon the said defendant, Norman Markuson, and after the possession of said premises and said personal property was taken by said officer, and while the injunctional order was in full force and effect, the said defendant, Norman Markuson, with force and violence, rescued and retook possession of the said premises and said personal property, and removed and carried

60 away the said personal property, to wit, a large quantity of beer, from the said premises and from possession of said officer.

Sixth. That the said defendant, Norman Markuson, was tried, found guilty, and convicted on the 29th day of June, 1895, for violating the lawful provisions of a certain injunctional order, issued by the judge of this court, under and pursuant to section 13 of chapter 110 of the Laws of 1890 of the State of North Dakota, being section 7605 of the Revised Code of the said State.

Conclusions of Law.

From said findings of fact the court makes the following as its conclusions of law:

That the said defendant, Norman Markuson, is guilty of criminal contempt of court, as provided by section 7605 of the Revised Code of the State of North Dakota, and that the said contempt is and constitutes the second offense of contempt under and against provisions of said section 7605 of the Revised Code of the State of North Dakota.

Order for Judgment.

Pursuant to the facts found in the trial of the above-entitled cause by this court and its conclusions of law adduced therefrom, and on motion of Edward Winterer, State's attorney for Barnes county, North Dakota, and Herbert Root, assistant and special counsel, appearing for the State of North Dakota—

It is hereby ordered that the judgment and sentence of the court be rendered and pronounced in open court in the presence and
61 hearing of said defendant, Norman Markuson, and that the clerk enter the same upon the minutes of the court. The judgment and sentence against the said defendant, Norman Markuson, is that he be imprisoned in the State penitentiary for the State of North Dakota for the period of one year.

Let judgment be entered accordingly.

By the court:

S. L. GLASPELL, *Judge.*

On the 6th day of August, 1897, the defendant perfected an appeal to the supreme court of the State of North Dakota by serving upon the plaintiff's attorneys and the clerk of the district court, Barnes county, a notice of appeal and a supersedeas bond in the sum of one thousand dollars ($1,000.00).

Defendant's Assignments of Errors.

(Title.)

Now comes the defendant and says there is manifest error on record herein, to his great prejudice, and assigns and specifies the same and assigns said specifications of error as a reason why the verdict should be set aside, vacated, and that he be restored to all his rights and privileges:

I.

That the court erred in refusing to quash and vacate the information and attachment filed in such case upon the grounds as follows:

1. That said information is insufficient on its face.

62 2. That the search warrant set forth in said information directing the seizure of certain property and that the injunc-

tion therein set forth enjoining any person from interfering with the officer's possession of the same after it had been seized *was* void for the following reasons: That said search warrant is contrary to the provisions of section 18 of the constitution of the State of North Dakota in this, that it is unreasonable, vague, and indefinite, and does not particularly describe the place to be searched or the things to be seized.

3. That it does not affirmatively appear from the affidavit of information herein that the officer executing such warrant executed and returned the same within the ten days, as provided by section 8471 of the Revised Code of the State of North Dakota; that the same has not become void by reason of the failure of said officer to execute and return the same within the time provided by section 8471 of the Revised Codes of the State of North Dakota.

4. That the provisions of section 7605 of the Revised Codes of the State of North Dakota, authorizing the issuance of a search warrant directing the officer that in case he finds intoxicating liquors on the premises to be searched he is to seize and take into his possession all property found on said premises, is in conflict with section 13 of the constitution of the State of North Dakota, which provides that no person shall be deprived of life, liberty, or property without due process of law, and that the search warrant set forth in the information herein and issued in pursuance thereof is void.

63 5. That the court erred in refusing the defendant's demand to be tried under the law regulating the trial of criminal contempts as defined by chapter 34, article 1, of the Code of Civil Procedure, for the reason that the allegations and averments in the information did not constitute contempt as defined by section 7605 of the Revised Codes of the State of North Dakota.

6. That the court erred in overruling defendant's demand to be tried by jury.

II.

That the court erred in its conclusions of law as based upon its findings of fact in this:

1. That the fifth finding of fact does not bring the defendant within the provisions of section 7605 of the Revised Codes of the State of North Dakota in this, that the findings therein found constitute no contempt under section 7605 of the Revised Codes of the State of North Dakota.

2. That the court erred in its conclusions of law wherein he finds that the defendant is guilty of contempt as described in section 7605 of the Revised Codes of the State of North Dakota, and that said contempt "is and constitutes a second offense under and against the provisions of section 7605 of said Revised Codes of the State of North Dakota," in this, that the court makes no findings of fact which constitute contempt under section 7605 of the Revised Codes of the State of North Dakota.

3. The court erred in its findings of fact and conclusions of law wherein he finds the defendant guilty of a second offense of con-

tempt under section 7605 of the Revised Codes of the State of
64 North Dakota upon the ground and for the reason that the information does not state facts sufficient to constitute a second offense under section 7605 of the Revised Codes of the State of North Dakota, and does not give the court jurisdiction to try the defendant for a second offense under said section.

III.

That there is also manifest error on the face of the record in this, to wit:

1. That the evidence does not tend to or support the findings of fact and conclusions of law for the following reasons: There is no evidence showing or tending to show that the said defendant, Norman Markuson, with force and violence rescued and retook possession of the property or premises described in said complaint or search warrant, or that he carried away the same as held by the court in paragraph 5 of the findings of fact.

2. There is no evidence showing or tending to show that any part or portion of the property described in said search warrant in said complaint or as having been taken possession of under the return of said constable—that the same or any part thereof was intoxicating liquors or used in the maintenance of any nuisance, as described in section 7605 of the Revised Codes of the State of North Dakota.

3. That there is no evidence showing or tending to show that the said defendant committed a contempt of court as described by section 7605 of the Revised Codes of the State of North Dakota, as found by paragraph 5 of the findings of fact made by the court in this action.

64½ IV.

That there is manifest error on the face of the record herein in this, that the order for judgment and the judgment as pronounced by the court herein is void for indefiniteness and uncertainty in this, that it does not sufficiently specify and fix the time when said sentence shall commence and become operative and in full force and effect.

65 V.

The court erred in overruling defendant's request for trial by jury for the reason:

That by so doing the court denied the defendant a constitutional right as provided by section 7 of the constitution.

The court erred in pronouncing judgment upon the defendant for the reason:

That the defendant was deprived of his liberty without due process of law, which is guaranteed to him under section 13 of the constitution.

That the judgment of the court is void:

First. For the reason that it is not based upon or warranted by any law in force at the date thereof in the State of North Dakota.

Second. That section No. 7605 is unconstitutional and void in so far as it provides for imprisonement in the State's prison for contempt of court.

Dated this 15th day of September, A. D. 1897.

M. CONKLIN,
M. E. REMMEN,
W. H. BARNETT,
Attorneys for Defendant.

STATE OF NORTH DAKOTA, }
County of Barnes. }

In the District Court, Fifth Judicial District.

STATE OF NORTH DAKOTA, Plaintiff, }
against }
NORMAN MARKUSON, Defendant. }

66 I, S. L. Glaspell, judge of the district court in and for the county of Barnes, State of North Dakota, fifth judicial district, before whom the foregoing-entitled action was tried, hereby certify that the record herein attached contains in itself all the bill of exceptions and a true copy of all the evidence in said case, and I hereby certify that the exceptions appearing therein were made within due time and within that allowed by the court, and that the assignments of error therein contained have been examined and allowed by the court, and the said foregoing attached bill of exceptions is hereby to be and become, and the same is hereby, attached to the record of said case, to be allowed in the arguments of it before the supreme court of the State of North Dakota, and I hereby further certify that the same has been properly examined by the court in due and within the time allowed by the court.

Dated this 21st day of September, 1897.

S. L. GLASPELL,
Judge of the District Court in and for Barnes County, Fifth Judicial District, State of North Dakota.

Respectfully submitted.

M. CONKLIN,
M. E. REMMEN,
W. H. BARNETT,
Attorneys for Defendant.

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Upon the back of said abstract appear indorsements in words and figures following, to wit:

"# 18. U. S. district court. In the matter of the petition of Norman Markuson for a writ of *habeas corpus*. Copy of abstract in the case of 'State of North Dakota *vs.* Norman Markuson.' Filed Mar. 31, 1898. J. A. Montgomery, clerk, by E. R. Steele, deputy."

68 & 69 Thereupon, afterwards, to wit, on said 31st day of March, 1898, a judgment was entered in said matter, which appears of record on the journal of the court, at page # 1861; which said judgment is in words and figures following, to wit:

"In the Matter of the Petition of NORMAN MARKUSON for a Writ of *Habeas Corpus*.

Comes now the petitioner, Norman Markuson, in the custody of the United States marshal, with his attorney, C. D. O'Brien, Esq., and The County of Barnes, by E. Winterer, Esq., county attorney, and N. F. Boucher, the warden of the State penitentiary of North Dakota. This matter having been heretofore argued and submitted to the court and taken under advisement, now, after due consideration, it is—

Ordered and adjudged that the writ of *habeas corpus* herein be, and the same hereby is, discharged, and said petitioner, Norman Markuson, be remanded to the custody of said N. F. Boucher, as warden of the State penitentiary of North Dakota.

Now, said petitioner prays an appeal from this judgment, and files his petition for appeal, and an order allowing same is signed in open court."

Thereupon, afterwards, to wit, on said March 31st, 1898, notice of appeal was filed in said matter; which said notice of appeal is in words and figures following, to wit:

" United States District Court, District of North Dakota.

In the Matter of the Petition of NORMAN MARKUSON for His Discharge on a Writ of *Habeas Corpus*.

Notice of Appeal.

70 SIRS: Please take notice that Norman Markuson, the petitioner above named, appeals to the Supreme Court of the United States of America from the judgment and determination of the said district court made and entered March 31st, 1898, in the above-entitled proceeding denying his petition for discharge from imprisonment.

Dated March 31st, 1898.

C. D. & THOS. D. O'BRIEN,
Attorneys for Petitioner, St. Paul, Minn.

To the Honorable John F. Cowan, attorney general for the State of North Dakota, and Edward Winterer, State's attorney.

Due service of the above notice of appeal is admitted, at Fargo, North Dakota, this 31st day of March, 1898.

EDWARD WINTERER,
Valley City, N. D., State's Attorney.
JOHN F. COWAN,
Attorney General State of North Dak., Bismarck, N. D."

Upon the back of said notice of appeal appear indorsements in words and figures following, to wit:

"18. United States district court, district of North Dakota. In the matter of the petition of Norman Markuson for his discharge on a writ of *habeas corpus*. Notice of appeal. Filed Mar. 31, 1898. J. A. Montgomery, clerk, by E. R. Steele, deputy."

Thereupon, afterwards, to wit, on said 31st day of March, 1898, an assignment of errors was filed in said matter; which said assignment of errors is in words and figures following, to wit:

71 " United States District Court, District of North Dakota.

In the Matter of the Petition of NORMAN MARKUSON for His Discharge on a Writ of *Habeas Corpus*.

Assignment of Errors.

Now comes said Norman Markuson, the petitioner above named, by C. D. & Thomas D. O'Brien, his attorneys, and files in this court an assignment of errors in the final order and judgment of said court denying his application to be discharged as follows:

1. That said district court erred in holding and adjudging that his imprisonment was not contrary to law and in violation of the Constitution of the United States.

2. That said district court erred in holding and adjudging that said Norman Markuson was not entitled to his liberty.

3. That said district court erred in denying the application of the said Norman Markuson for his discharge.

4. That said district court erred in holding that chapter 110 of the laws passed at the first session of the Legislative Assembly of the State of North Dakota, being the laws of the year 1890 and the amendments thereto, is not unconstitutional and invalid under article 14 of the amendments to the Constitution of the United States of America.

5. The said district court erred in holding that section 13 of chapter 110 of the General Laws of the State of North Dakota for the Year 1890, being section 13 of chapter 110 of the Laws of the
72 First Session of the Legislative Assembly of the State of North Dakota, as amended is not void and unconstitutional under article 14 of the amendments to the Constitution of the United States of America.

6. The said district court erred in overruling the contention of said petitioner that those portions of the said section 13 of chapter 110 of the Laws of 1890, as amended, of the State of North Dakota which provide that an injunctional order may be issued by any district court of the State of North Dakota upon an affidavit or complaint, or both, of the State's attorney, attorney general, or his assistant upon information and belief, and those provisions of said section which provide that if an affidavit be presented to a court of judge stating or showing that intoxicating liquor is sold, bartered, or given away on certain premises the court or judge must, at the time of granting the injunction, issue his warrant commanding the officer serving the writ, at the time of such service, to diligently search the premises, and if such officer, upon such search, shall find upon such premises any liquors of any kind he shall take and hold possession of such premises and keep the same closed until such final judgment; also those portions of said section which provide that leasehold premises may be taken and closed in the manner aforesaid, regardless of any guilty intent or knowledge on the part of the lessor; also those portions of said section which provide that the owner of the premises, in case the same are leased, must pay all costs and prepare and file a bond, with sureties, conditioned that he will immediately abate any nuisance upon said premises and prevent the same from being established or kept thereon within the period of one year thereafter before he can secure a return of
73 such property, regardless of the guilt or innocence of said owner; also those portions of said section which provide for depriving a lessor of his property in the absence of any provision for making him a party to the action or giving him his day in court, are each and all unconstitutional and void as contravening the provisions of article XIV of the amendments to the Constitution of the United States.

7. The said district court erred in overruling the contention of said petitioner that said chapter 110 of the Laws of 1890, as amended, of the State of North Dakota, and particularly section 13 thereof, conferred no authority upon the district court of the State of North Dakota to issue and make its order closing the building and prem-

ises in question, with the disobedience of which order the petitioner was charged and upon which the said contempt proceedings were founded and based.

9. The said district court erred in overruling the contention of the petitioner that the said petitioner was, by reason of such order and judgment committing him for contempt by the said district court, deprived of his liberty without due process of law.

Wherefore the said Norman Markuson prays that said order and judgment of said district court made and dated March 31st, 1898, denying and refusing his application for a discharge, may be in all things reversed and he discharged from imprisonment.

Dated March 31st, 1898.

C. D. & T. D. O'BRIEN,
Attorneys for Petitioner, St. Paul, Minn.

Upon the back of said assignment of errors appear indorse-
74 ments in words and figures following, to wit:

"United States district court, district of North Dakota. In the matter of the petition of Norman Markuson for his discharge on a writ of *habeas corpus*. Assignment of errors. Filed Mar. 31, 1898. J. A. Montgomery, clerk, by E. R. Steele, deputy."

Thereupon, afterwards, to wit, on the said 31st day of March, 1898, a petition for appeal was filed in said matter; which petition is in words and figures following, to wit:

"United States District Court, District of North Dakota.

In the Matter of the Petition of NORMAN MARKUSON for His Discharge on a Writ of *Habeas Corpus*.

Petition for Appeal.

Application for his discharge having been denied, now comes Norman Markuson, the petition- above named, by C. D. & Thos. D. O'Brien, his attorneys, and in open court prays an appeal to the Supreme Court of the United States from the judgment and determination of this court denying his petition for his discharge.

Dated March 31, 1898.

C. D. & THOS. D. O'BRIEN,
Attorneys for Petitioner, St. Paul, Minn."

Upon the back of said petition appear indorsements in words and figures following, to wit:

"# 18. United States district court, district of North Dakota. In the matter of the petition of Norman Markuson for his discharge on a writ of *habeas corpus*. Petition for appeal. Filed Mar. 31, 1898. J. A. Montgomery, clerk, by E. R. Steele, deputy."

75 Thereupon, afterwards, to wit, on said 31st day of March, 1898, an order allowing appeal was made in said matter; which order is in words and figures following, to wit;

"United States District Court, District of North Dakota.

In the Matter of the Petition of NORMAN MARKUSON for His Discharge on a Writ of *Habeas Corpus*.

Appeal.

The application of Norman Markuson for his discharge having been refused by this court, and he having thereupon prayed this day in open court that an appeal be allowed to the Supreme Court of the United States from the said judgment and determination of this court, on motion of C. D. & Thos. D. O'Brien, attorneys for the petitioner, and after hearing Edward Winterer, State's attorney, it is—

Ordered that such an appeal be, and the same is hereby, allowed; and it is—

Ordered that the clerk of the United States district court for the district of North Dakota do send up to the Supreme Court of the United States a transcript of the petition, writ of *habeas corpus*, return thereon, and all other records, files, minutes, and proceedings in this matter.

It is further ordered that the said Norman Markuson furnish or cause to be furnished and filed an undertaking in his behalf in the sum of two hundred dollars ($200.00), to be approved by the undersigned, conditioned that the said petitioner shall pay all costs that may be awarded against him on account of said appeal
76 should the judgment be affirmed; and it is further ordered that the orders and judgments heretofore had in this cause remanding said Markuson to the custody of N. F. Boucher, warden of the State penitentiary of North Dakota, and all orders and judgments and commitments heretofore made and entered in and issued from the State court referred to in the petition herein be, and the same are hereby, superseded until a final decision of the Supreme Court can be had in the case upon the filing of a recognizance in the sum of four thousand dollars by or on behalf of said Markuson, with surety to be approved by t-e undersigned, conditioned for his appearance to answer said judgment.

Dated March 31st, 1898.

CHARLES F. AMIDON,
United States District Judge."

Upon the back of said appeal order appear indorsements in words and figures following, to wit:

"# 18. United States district court, district of North Dakota. In the matter of the petition of Norman Markuson for his discharge on a writ of *habeas corpus*. Appeal. Filed Mar. 31, 1898. J. A. Montgomery, clerk, by E. R. Steele, deputy."

Thereupon, afterwards, to wit, on said 31st day of March, 1898, a bond for costs was filed in this matter; which bond for costs is in words and figures following, to wit:

"United States District Court, District of North Dakota.

In the Matter of the Petition of NORMAN MARKUSON for his Discharge on a Writ of *Habeas Corpus*.

Bond for Costs.

77 Whereas the petitioner in the above-entitled cause and proceedings has duly applied for an appeal to the Supreme Court of the United States of America from the judgment of said district court, entered in said cause on the 31st day of March, 1898, denying his petition for discharge from imprisonment and discharging the said application; and

Whereas said petitioner's prayer for an appeal has been allowed and said appeal is by said petitioner about to be perfected:

Now, therefore, we, Thomas O'Malley and Otto Becker, of Valley City, North Dakota, residents and freeholders of said district of North Dakota, do hereby undertake, promise, and agree that if the respondent herein, The State of North Dakota, recover judgment in said action or the judgment so appealed from is affirmed that the said petitioner shall pay all costs that may be awarded against him on account of said appeal, not exceeding in the aggregate the sum of two hundred dollars ($200), which is the penalty of this undertaking.

In testimony whereof we have hereunto set our hands and seals this 31st day of March, 1898.

THOMAS O'MALLEY. [SEAL.]
OTTO BECKER. [SEAL.]

Signed, sealed, and delivered in presence of—
CHARLES J. MURPHY.
CHAS. S. HITCHCOCK.

78 STATE OF NORTH DAKOTA, } ss:
County of Cass, }

Be it known that on this 31st day of March, 1898, before me personally appeared Thos. O'Malley and Otto Becker, to me well known to be the same persons described in and who executed the foregoing instrument, and duly acknowledged that they executed the same.

[SEAL.]

J. A. MONTGOMERY,
Clerk U. S. District Court.

STATE OF NORTH DAKOTA, } ss:
County of Cass, }

Thomas O'Malley and Otto Becker came before me personally, and, being first duly sworn, each for himself doth depose and say that he is a resident and freeholder of the State of North Dakota and worth the sum of four hundred dollars ($400.00) over and above his debts and liabilities and property exempt from execution.

THOMAS O'MALLEY.
OTTO BECKER.

Subscribed and sworn to before me this 31st day of March, A. D. 1898.

[SEAL.] J. A. MONTGOMERY,
Clerk U. S. District Court."

79 Upon the back of said bond for costs appear indorsements in words and figures following, to wit:

"#18. United States district court, district of North Dakota. In the matter of the petition of Norman Markuson for his discharge on a writ of *habeas corpus*. Bond for costs. Filed Mar. 31, 1898. J. A. Montgomery, clerk, by E. R. Steele, deputy."

Thereupon, afterwards, to wit, on said 31st day of March, 1898, a supersedeas bond and order were filed in said cause; which bond and order are in words and figures following, to wit:

UNITED STATES OF AMERICA, } ss:
District of North Dakota, }

Be it remembered that on this 31st day of March, 1898, before me, J. A. Montgomery, clerk of the district court of the United States within and for the district aforesaid, duly appointed as such by said court, personally came Norman Markuson, as principal, and Thomas O'Malley and Otto Becker, as sureties, and jointly and severally acknowledged themselves to owe the United States of America the sum of two thousand dollars ($2,000.00), to be levied on their goods and chattels, lands and tenements, if default be made in the condition following, to wit:

The condition of this recognizance is such that whereas the above-named Norman Markuson has duly applied to the said district court and the judge thereof for a writ of *habeas corpus* praying and asking a release from imprisonment from the State penitentiary of the State of North Dakota; and whereas, at a general term of the district court of the United States of the district of North Dakota, the judgment of said court was made and entered on the 31st

80 day of March, 1898, denying the petition of the said Markuson for his release and discharge and remanding him to the custody of the said warden of the said State penitentiary; and whereas afterwards, in open court, at a general term of the said district court, the said petitioner prayed an appeal from the judgment of the said district court of the United States to the Supreme Court of the United States, which said appeal has been allowed; and whereas the said district court of the United States has made and entered its order superseding the said judgment of the said district court of the United States and the order, judgment, and commitment of the district court of the district of North Dakota, under which said Markuson remained in prison, pending said appeal and until the final decision of the Supreme Court of the United States can be had in the case:

Now, therefore, we, the said Norman Markuson and Thomas O'Malley and Otto Becker, do hereby undertake, promise, and agree that if said judgment so appealed from should be affirmed we and

each of us shall produce the said Norman Markuson and his body to answer whatever decision the Supreme Court may render in the cause relative to the body of the said Norman Markuson and then and there abide the further order of said court, then this recognizance to be void; otherwise to remain in full force and virtue.

NORMAN MARKUSON. [SEAL.]
THOMAS O'MALLEY. [SEAL.]
OTTO BECKER. [SEAL.]

81 Taken and acknowledged before me the day and year above written.

[SEAL.] J. A. MONTGOMERY,
Clerk of the U. S. District Court for the District of North Dakota.

UNITED STATES DISTRICT COURT, *District of North Dakota,* } *ss:*

We, Thomas O'Malley and Otto Becker, do each solemnly swear that we are residents and freeholders of the State of North Dakota, and that after paying our just debts and liabilities we are each worth the sum of $4,000 in real estate within the jurisdiction of this court and subject to execution, levy, and sale.

THOMAS O'MALLEY.
OTTO BECKER.

Subscribed and sworn to before me this 31st day of March, A. D. 1898.

[SEAL.] J. A. MONTGOMERY,
Clerk U. S. District Court for the District of North Dakota.

The within recognizance and the sureties thereon are by me approved this 31st day of March, A. D. 1898.

CHARLES F. AMIDON,
Judge U. S. District Court, District of North Dakota.

82 On filing the within recognizance, approved by me, the clerk will issue his certificate, directed to the warden of the penitentiary of the State of North Dakota, reciting the orders made in the within-entitled proceeding relating to the — superseding the previous orders and judgment of this court and of the State court referred to in the petition pending the appeal, and providing for the release of said Norman Markuson pending such appeal.

Dated March 31st, 1898.

CHARLES F. AMIDON,
Judge U. S. District Court, District of North Dakota."

Upon the back of said bond and order appear indorsements in words and figures following, to wit:

"#18. United States district court, district of North Dakota. In the matter of the petition of Norman Markuson for his discharge on a writ of *habeas corpus.* Supersedeas bond and order. Filed Mar. 31, 1898. J. A. Montgomery, clerk, by E. R. Steele, deputy."

83 UNITED STATES OF AMERICA, } ss:
District of North Dakota, }

I, J. A. Montgomery, clerk of the district court of the United States for the district of North Dakota, do hereby certify that the foregoing pages, from one to eighty-two, contain true and faithful transcripts of all pleadings, process, and proceedings of record and on file in my office as said clerk, and the whole thereof and the indorsements thereon, "In the matter of the petition of Norman Markuson for a writ of *habeas corpus.*"

Witness my hand and the seal of said district court, at Fargo, North Dakota, this 20th day of April, A. D. 1898.

[Seal United States District Court, North Dakota.]

J. A. MONTGOMERY, *Clerk.*

[Endorsed:] No. —. United States district court, district of North Dakota. In the matter of the petition of Norman Markuson for a writ of *habeas corpus.* Transcript on appeal.

Endorsed on cover: Case No. 16,875. North Dakota D. C. U. S. Term No., 298. Norman Markuson, appellant, *vs.* N. F. Boucher, warden of the penitentiary of North Dakota, at Bismarck. Filed May 16th, 1898.